

TITLE 15. BOARD OF PRISON TERMS

STATEMENT OF EMERGENCY

RN 04-03

SUBJECT: *ATTEMPTED MURDER*

NOTICE IS HEREBY GIVEN that the Board of Prison Terms (Board) proposes to amend sections (§§) 2000, 2400 and 2403 Title 15, Division 2, California Code of Regulations (CCR) after considering all comments, objections, and recommendations regarding the proposed action.

AUTHORITY/REFERENCE

These regulations are submitted pursuant to the Board's authority under Penal Code (PC) §§ 3052 and 5076.2 and are amended to implement, interpret, and/or make specific PC §§ 182, 3040 and 3041.

FINDING OF EMERGENCY

The Board finds that its February 10, 2004, emergency order amending Title 15, CCR §§ 2400 and 2403 is necessary for the immediate preservation of the public peace, health and safety, or general welfare.

This action amends the term guidelines for prisoners convicted of attempted murder as well as implementing and clarifying recent laws. Specifically, it will implement the recent court order in the case of *In re Thomas Sims* which found that the referral to "attempted murder" as referenced in the CCR §§ 2403 (b) and (c) does not adequately apply to prisoners who have been convicted of attempted murders. Parole suitability hearings occur on most business days throughout the State. Immediate adoption of provisions remedying the problem identified by the court is necessary to clarify appropriate guidelines for use by hearing panels and prisoners preparing for parole suitability hearings. Additionally, amendments to CCR § 2400 clarify incomplete or confusing references to certain attempted murders.

The Board has determined that no reasonable alternatives identified or considered would be more effective in carrying out the purpose for which the action is proposed, or would be as effective as and less burdensome to affected private persons than the proposed regulatory action.

The Board intends that these amendments take effect as soon as possible, on an emergency basis, until made permanent under appropriate procedures. Given the current effectiveness of the court orders in *Sims*, the regular process for adopting regulations under the Administrative Procedure Act would not be sufficient or effective.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Penal Code § 5076.2 authorizes the Board to maintain, publish, and make available to the general public, a compendium of its rules and regulations.

Currently, CCR § 2403 provides matrices for life prisoners convicted of first and second degree murder consisting of “suggested base terms” which are established solely on the gravity of the base crime, taking into account all of the circumstances of that crime. The panel shall determine the category most closely related to the circumstances of the crime and impose the middle base term indicated in the matrix unless the panel finds circumstances in aggravation or mitigation. If the panel finds circumstances in aggravation or in mitigation, as provided in CCR §§ 2404 and 2405, it may impose the upper or lower base term provided in the matrix by stating the specific reasons for imposing such term. If the prisoner has been sentenced to prison for attempted willful, deliberate and premeditated murder, the panel shall refer to matrix (b), designated for first degree murders; for all other attempted murders, the panel shall refer to matrix (c), designated for second degree murders. After determining the appropriate category, the panel shall impose one-half the middle base term, unless the panel finds circumstances in aggravation or mitigation.

This emergency action will implement the recent court order in the case of *In re Thomas Sims* which found that the referral to “attempted murder” as referenced in the CCR § 2403 (b) and (c) does not accurately apply to prisoners who have been convicted of attempted murders.

Amendments to CCR § 2000 add attempted murder of a peace officer or firefighter committed on or after January 1, 1995, and attempted willful, deliberate, and premeditated murder of a peace officer or firefighter committed on or after January 1, 1998, to the list of life crimes, consistent with the new attempted murder matrices.

Amendments to CCR § 2400 delete language referring to specific attempted murders committed on or after January 1, 1987, since this does not accurately reflect all prisoners sentenced to attempted murder crimes pursuant to PC § 664. Additional language stating that PC § 3046 establishes the minimum eligible parole date for attempted murders has been deleted since such language is unclear. Further technical changes have been made for consistency in grammar, syntax, and formatting.

Language in CCR § 2403 referring to the Board’s current process for determining parole release dates for attempted murderers, has been deleted. Such language currently reads as follows:

“If the prisoner has been sentenced to prison for attempted murder, after determining the category as specified, the panel shall impose one half the middle base term, unless the panel finds circumstances in aggravation or mitigation. For all attempted willful, deliberate and premeditated murders, the panel shall refer to matrix (b). For all other attempted murders, they shall refer to matrix (c).”

Three *new* matrices have been added to CCR § 2403 for attempted murders (subdivisions (d) through (f)) described in PC § 664, subdivisions (a), (e) and (f). These matrices are consistent with the findings in *In re Sims*, discussed in the Finding of Emergency above.

New subsection (g), entitled “Base Terms for Other Life Crimes” has been added to CCR § 2403 for consideration of those life crimes that are not addressed in the life term matrices.

LOCAL MANDATES

The Board has determined that the proposed action imposes no mandate upon local agencies or school districts.

FISCAL IMPACT STATEMENT

- Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: *None*
- Cost or savings to any state agency: *None*
- Other non-discretionary cost or savings imposed on local agencies *None*
- Cost or savings in federal funding to the state: *None*